

EMIL I. STADLER

IBLA 74-82

Decided March 27, 1974

Appeal from decision of Alaska State Office, Bureau of Land Management, offering a renewal lease on a small tract, A-049708.

Affirmed.

Small Tract Act: Sales--Withdrawals and Reservations; Effect of

Where a Public Land Order withdraws public lands and reserves them for selection by a Native Village Corporation, subject to valid existing rights, the sale of such lands under the Small Tract Act, as amended, 43 U.S.C. §§ 682a-e (1970), is foreclosed unless in furtherance of a valid right existing at the time of the withdrawal.

Withdrawals and Reservations: Effect of--Small Tract Act: Generally-- Small Tract Act: Preference Rights--S

Where a Public Land Order withdraws public lands and reserves them for selection by a Native Village Corporation, subject to valid existing rights, the holder of a pre-existing small tract lease, covering a portion of the lands, may be granted a renewal lease pursuant to 43 U.S.C. § 1621(i) (Supp. II, 1972) and 43 CFR Subpart 2650.

APPEARANCES: William F. Tull, Esq., Palmer, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Emil I. Stadler has appealed from a decision of the Alaska State Office, Bureau of Land Management, dated July 11, 1973,

offering a renewal lease on a small tract, A-049708. His appeal 1/ stated that he wished to purchase the property on which his improvements are situated and the rentals paid or due to be applied to the purchase price.

The tract of land involved can be described as a roughly rectangular five-acre plot measuring 330 feet by 600 feet, bordering the northern shore of Stephan Lake, in protracted section 2, T. 30 N., R. 3 E., S.M., Alaska. Pursuant to the provisions of the Small Tract Act, as amended, 43 U.S.C. §§ 682a-e (1970), Classification Order No. 443-NC, of April 25, 1961, classified the tract as suitable for leasing only and established a rental at the annual minimum. Apparently the reason for the minimum rental was that no adequate basis then existed for valuation of the tract.

Appellant received a five-year lease which commenced June 1, 1961. On March 29, 1966, he filed a lease renewal application. However, due to the lack of an appraisal and a field report, no action could be taken on the renewal application until the decision offering a lease was issued. The decision offered a renewal of appellant's lease for the first five-year period at the original rental, \$25 per year, and also offered a subsequent renewal, based on an appraisal of fair market value made October 27, 1972. That appraisal was based on market value as estimated by reference to four comparable sales of small tracts in 1971 and 1972. The State Office decision therefore offered renewals, through June 30, 1976, for the sum of \$1,495.

Appellant does not challenge the appraisal, but seeks instead to purchase this tract. However, Public Land Order 5255, 37 F.R. 18915, became effective by September 15, 1972, 2/ the date of its filing with the Federal Register. This Public Land Order, by amending a previous Public Land Order, 3/ effectuated the withdrawal of lands described by protracted description as T. 30 N., Rs. 1 through

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1/ Notice of this appeal was received August 23, 1973, over 30 days after the date of the decision appealed from. The pertinent regulation requires filing of a notice of appeal "\* \* \*" within 30 days after the person taking the appeal is served with the decision from which he is appealing. "\* \* \*" 43 CFR 4.411. However, the record fails to reveal the date of service of the Alaska State Office decision, and thus this appeal is considered on its merits. 43 CFR 4.410.

2/ A withdrawal order constitutes valid notice, and so becomes effective, by its filing with the Federal Register. Solicitor's Opinion, M-36382 (October 24, 1956); Edwards v. Brockbank, A-25960 (April 3, 1951).

3/ Public Land Order 5174, 37 F.R. 5576, filed March 15, 1972.

11 E., S.M., Alaska. Therefore the tract appellant seeks to purchase is not available at present, having been withdrawn for selection under section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (Supp. II, 1972) by the Cook Inlet Village Association. <sup>4/</sup>

Where a Public Land Order withdraws public lands, subject to valid existing rights, the disposal of such lands is foreclosed unless pursuant to the terms of the withdrawal or in furtherance of a valid right existing at the time of the withdrawal. Vera Potter, 13 IBLA 131 (1973); cf. Everett H. Adkins, A-28245 (May 23, 1960). Additionally, public lands which have been withdrawn and reserved for selection by Native Village Corporations are not available for sale under the Small Tract Act, supra, where no valid existing right for such sale exists. See Robert Hoopes, A-29676 (November 13, 1963).

Some delay apparently occurred in the processing of this matter. A small tract applicant acquires no right or interest by the filing of his application other than the right to have his application considered, and he cannot gain any further right because of a delay in the processing of his application. Jack T. Lofstrom, A-30699 (March 23, 1967); but see Richard J. Krejsa, Anchorage 060945 (June 29, 1965), approved by the Under Secretary (July 6, 1965).

This brings to the fore the issue whether the small tract lease may be renewed, as envisaged by the decision below. The land in issue has been withdrawn from all forms of appropriation and disposal and reserved for a specific purpose, i.e., selection by a Native Village Corporation. However, paragraph 5 of the order of withdrawal reserves in the Secretary of the Interior the authority set forth in section 22(i) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1621(i) (Supp. II, 1972), and the pertinent regulation, 43 CFR 2650.1, to issue leases in certain circumstances. That section of the Act reads:

(i) Prior to a conveyance pursuant to section 1613 of this title [sec. 14], lands withdrawn by or pursuant to sections 1610, 1613, and 1615 of this title [secs. 11, 14, 16] shall be subject to administration by the Secretary [of the Interior], or by the Secretary of Agriculture in the case of National Forest lands, under applicable laws and regulations, and their authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by the withdrawal.

Any renewal of the lease must comply with 43 CFR Subpart 2650.

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<sup>4/</sup> See 43 U.S.C. § 1610(b)(3) (Supp. II, 1972), containing section 11(b)(3) of the Alaska Native Claims Settlement Act, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is affirmed.

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Frederick Fishman  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Martin Ritvo  
Administrative Judge

